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Supreme Court of the United States

October Term 1952

No. 331 MISC.

CAMILO WESTON LEYRA,

Petitioner,

—against—

THE PEOPLE OF THE STATE OF NEW YORK,

Respondents.

PETITION FOR REHEARING OF APPLICATION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

HARRY G. ANDERSON,
FREDERICK W. SCHOLEM,
Counsel for Petitioner.

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States.

Comes now, Camilo Weston Leyra, and respectfully petitions this Honorable Court for a reconsideration of his petition for a writ of certiorari to review the judgment of the County Court of the County of Kings, State of New York, as affirmed by the Court of Appeals of the State of New York, whereby your petitioner was adjudged guilty of murder in the first degree, and sentenced to death.

The petition was submitted under Number 331 Misc. of the October Term, 1952 and was denied by order filed March 16th, 1953. Mr. Justice Black and Mr. Justice Douglas, however, are of the opinion that the petition should be granted. The stay of execution, theretofore, granted by

Mr. Justice Charles W. Froessel, Associate Judge of the Court of Appeals of the State of New York, expires and a motion is now pending before the Court of Appeals of the State of New York to set a new date of execution. Petitioner is confined at Sing Sing State Prison, Ossining, New York.

This petition for rehearing is made, pursuant to the provisions of Rule 33 of the Rules of this Court.

Reasons Why a Rehearing Should Be Granted and a Writ of Certiorari Issued

Several cases now pending before this Court in which petitions for certiorari were granted, present questions of law similar to those presented in the instant case. (See *Stein, Cooper and Wissner* v. *State of New York,* October Term, 1952.)

Counsel for petitioner are not unmindful that full consideration was given to the petition. Yet they are so convinced that there was a denial of due process in this case, that they believe the failure so to demonstrate was due to fault on their part. In an effort to present a comprehensive review of the proceedings below, the very volume of the matters discussed may have obscured the fundamental problems sought to be presented.

Counsel recognize that while this Court is reluctant to review the administration of justice in the several States, it has repeatedly acted when it believed that fundamental due process has been denied. In this case, the belief that this has occurred arises from no single incident.

This is an unparalleled case in the annals of American jurisprudence.

If this Court can be convinced:

A. That a District Attorney hired a psychiatrist to mentally coerce the petitioner; that the prosecutor listened to the technique and mental coercion while it was being practiced on petitioner without intervention.

B. That a promise was made not to prosecute petitioner for murder in the first degree if he confessed.

C. That the psychiatrist threatened to give the petitioner an "injection" to make him talk; that the psychiatrist represented himself to be petitioner's doctor sent to cure his sinus condition. "If a physician may thus be used, then why not a lawyer or clergyman?" (Froessel J, in People v. Leyra 302 N. Y. 353, 363.)

D. That petitioner was continuously interrogated for four days without arraignment.

E. That the coerced confession, barred by the Court of Appeals in its unanimous reversal of this first conviction, was admitted into evidence at the second trial.

F. That petitioner was compelled to be a witness against himself.

would it then say that what occurred at this trial was not serious enough to warrant its intervention?

The New York Court of Appeals unanimously reversed the first conviction of the petitioner. The evidence in the second trial was substantially the same as in the first except that petitioner did not testify. The Court below affirmed the second conviction, but Chief Judge Loughran and Mr. Justice Fuld dissented. Is such a case so free from doubt that this Court will not hear argument on the merits?

I.

The case presents directly the question whether, mental coercion can be substituted in place of physical coercion for the purpose of obtaining confessions.

We submit this is a matter meriting review by this Court.

Indeed the evil of mental coercion is greater than physical violence for it leaves no tell-tale marks. Men can, if strong, withstand physical violence, yet no human mind can withstand continued mental coercion, not even great spiritual leaders.

II.

The Court of Appeals in unanimously reversing the first conviction 302 N. Y. 353 stated at page 364:

> "The transcript of the recording clearly discloses that the interview took place in an atmosphere of the utmost pressure, and in a manner and with a skill possible only to an experienced psychiatrist, unfamiliar with an accused's fundamental rights. As the prosecutor said of this psychiatrist in his summation: 'with his superior mental powers, his studies of psychology, he was able to accomplish what a brow-beating policeman might not have been able to obtain.' This was an eloquent tribute to the efficacy of mental coercion over physical."
>
> "Torture of the mind is just as contrary to inherent fairness and basic justice as torture of the body. A confession by which a person forfeits his life must be grounded on reasoned and voluntary choice. We would have to close our minds to the plain import of what occurred to deny that here was a deliberate attempt to extract a confession through the cease-

less pressure of a skillful psychiatrist by his peculiar technique, claiming to be defendant's doctor, promising to help him, giving assurances and at the same time conducting an unrelenting interrogation of the exhausted accused. Aside from constitutional objections, we have not yet reached the stage where medical science, represented by an accord among its experts, establishes the trustworthiness of a confession induced by the means here adopted. See 3 Wigmore on Evidence (3d ed.), Sec. 841a; People v. Forte, 279 N. Y. 204, 206, 18 N. E. 2d 31, 32, 119 A. L. R. 1198. Due process of law guaranteed by our State and Federal Constitutions commands that no such practice as revealed by this record shall send an accused to his doom, regardless of the brutality of the crimes with which he is charged."

When the Court of Appeals affirmed the second conviction, the dissenting Judges in the Court of Appeals stated:

"To see this case whole and in proper focus, it must be borne in mind that defendant's conviction rests solely upon his confessions and that the trial court so charged the jury, advising that, absent those confessions, 'defendant must be acquitted for the reason that the Court rules, as a matter of law, that all other evidence in the case * * * even if accepted by the jury as true, is insufficient upon which to predicate a verdict of guilty'" (see trial court's charge, fol. 2687).

"The trial judge charged unequivocally that Dr. Helfand had promised defendant, 'in order to induce him to confess,' that he would not be prosecuted for murder in the first degree, that such promise was authorized by the District Attorney and that defen-

> dant confessed in reliance upon it. Consequently, as the trial court went on to charge, that confession was inadmissible as a matter of law. (See Code Crim. Pro., Sec. 395.) In view of that charge—which, of course, became the law of the case—it necessarily follows, as a matter of ineluctable logic, that any and all other confessions to the District Attorney or those associated with him in the investigation and prosecution of this very homicide, must also be deemed to have been induced by that promise, and likewise inadmissible. Accordingly, when the court further instructed the jury that it might find that the confessions to assistants of the District Attorney and to a police captain—made within an hour or two after immunity had been promised—had not been induced by the promise, it pursued a course that was not only opposed to logic, but incompatible with the law of the case. That was error highly prejudicial to defendant.''

Counsel appreciate that this Court may be hesitant to review a case, where a petitioner has had two trials, and which received careful consideration by the New York Court of Appeals. But the very divergences of opinions of the Judges of that Court shows that there are very serious questions involved. When dissenting Judges of such distinction feel that the conviction should be reversed, the case surely is one which involves such fundamental principles as to warrant its review by this Court.

There is here, certainly, no doubt that mental coercion was exercised upon the petitioner; there certainly is grave doubt as to whether all confessions which were obtained within a period of four or five hours on the same night and without interruption were not infected by the virus of

coercion and were not induced by the promise not to prosecute if petitioner confessed. We submit that no judgment, especially of death, ever should go unreviewed in this Court where there is this grave doubt.

Counsel certify that this petition is presented in good faith and the sincere belief that it has merit, and not for the purpose of delay, and that there are intervening circumstances of substantial effect.

Wherefore, your petitioner, by counsel whose signatures are subscribed, pray that their petition for writ of certiorari may be reconsidered.

CAMILO WESTON LEYRA

By: HARRY G. ANDERSON

FREDERICK W. SCHOLEM

Counsel.

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

We hereby certify that we have examined the foregoing petition for rehearing and that it is restricted to the grounds specified therein and that in our opinion it is well founded and the cause is one in which the petition should be granted.

HARRY G. ANDERSON
Counsel for Petitioner

FREDERICK W. SCHOLEM
Counsel for Petitioner

Sworn to before me this
27th day of March, 1953.

FREDA GINDER
Notary Public, State of New York
No. 31-6525050
Qualified in New York County
Certificates filed with:
Bronx, Kings County Clerks
New York, Bronx, Kings Register's Offices
Term expires March 30, 1954

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AFFIDAVIT IN OPPOSITION TO PETITION FOR RE-HEARING OF APPLICATION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

MILES F. McDONALD,
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Kings County,
New York.

WILLIAM I. SIEGEL,
Assistant District Attorney,
of Counsel.

32 CASE PRESS, 30 Ferry Street, N. Y. C.—COrtlandt 7-0484-0485

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STATE OF NEW YORK, }
COUNTY OF KINGS, } ss.:

WILLIAM I. SIEGEL, being duly sworn, deposes and says:

I am an Assistant District Attorney on the staff of the District Attorney of Kings County. I am familiar with all the proceedings herein, having had charge thereof at all stages in the Court of Appeals of the State of New York and in this Court.

This affidavit is made in opposition to a petition for a re-hearing of an application for a writ of certiorari to the Court of Appeals of the State of New York. That Court affirmed a judgment of the County Court of Kings County which convicted petitioner of the crime of Murder in the First Degree for the killing of his father, Camilo Weston Leyra, Sr. A petition for a writ of certiorari to

the Court of Appeals was denied by an order filed March 16, 1953. The instant petition for a re-hearing follows.

I have carefully read the petition and respectfully submit to the Court that it makes no showing of any question of law or matter of fact which the Court overlooked in its decision denying the original petition. In essence, petitioner does no more than repeat, in abbreviated form, the contentions made in his original petition. Our submission is that repetition adds no merit to the meritless content of the arguments already made to, and rejected by, this Court.

Petitioner refers to the case of *Cooper, Stein and Wissner* v. *New York*, with a statement that petitions for certiorari have been granted by this Court following affirmance of judgments of conviction for Murder in the First Degree (303 N. Y. 856, 982). It is claimed that there is similarity between that and the instant case. The claim is unfounded.

The Court of Appeals affirmed without opinion. On a motion to amend the Remittitur, however, the Court certified to this Court that there were present in the case and necessarily passed upon by the Court of Appeals the following questions:

(1) Whether the admission in evidence of the confession of the defendant Cooper violated his rights under the Fourteenth Amendment to the Constitution of the United States;

(2) Whether the admission in evidence of the confession and the prior and subsequent oral statements of the defendant Stein violated his rights under the Fourteenth Amendment of the Constitution of the United States;

(3) Whether the admission in evidence of the confessions of the defendants Cooper and Stein violated the rights of the defendant Wissner under the Fourteenth Amendment of the Constitution of the United States;

(4) Whether the refusal to sever the trial of the defendant Wissner from that of the defendants Cooper and Stein violated the rights of the defendant Wissner under the Fourteenth Amendment of the Constitution of the United States;

(5) Whether the refusal of the Trial Judge to delete from the confessions of defendants Cooper and Stein all references therein made to the defendant Wissner as a participant in the crime violated the rights of the defendant Wissner under the Fourteenth Amendment of the Constitution of the United States. The Court of Appeals held that the rights of the defendants under the Fourteenth Amendment of the Constitution of the United States had not been violated or denied.

This Court, in granting certiorari, limited its review to the admissibility of the various confessions.

With this in mind we have had recourse to the record on appeal and the briefs in the Court of Appeals. Examination of these documents discloses that defendants Cooper and Stein both contended that they had been subjected to extreme physical violence and brutality.

Cooper, it was claimed, was kept for hours handcuffed, part of the time sitting on a chair and part of the time sleeping in that fashion on a bare bed. He was beaten

to the point where a medical examination by the County Medical Examiner disclosed that "there were bruises on the left posterior lateral chest, abdomen, right bicep and both buttocks".

Defendant Stein claimed similarly to have been beaten, with the result that "there were bruises and black and blue marks on both arms. The left arm, area of discoloration and bruises, approximately 7 inches long and 4 inches wide. Right arm, above the elbow, discoloration and bruises about 3 inches long and 1 inch wide. Left lower chest, second, third and fourth ribs, from the floating ribs to the left and below left breast, black and blue marks in area approximately 3 by 4 inches."

Wissner's contention is that in view of the existence of the confessions by his co-defendants, it was prejudicial error to the point of unconstitutionality not to have granted him a separate trial.

In an uninterrupted line of cases, this Court has taken jurisdiction to determine independently *the question of fact* presented by claims of physical violence in the sequence of events preceding a confession. The Court considers such a course obligatory upon it under the Fourteenth Amendment to the Federal Constitution. We see in the granting of the petition for certiorari to Cooper, Stein and Wissner no more,—and, of course, no less,—than an adherence to this principle of constitutional interpretation. In the *Leyra* case, there is no such issue of fact. First (although, we concede, not in itself a determinative difference), the coercion was mental. Secondly, and most importantly, that coercion was never disputed by the People on the trial. The practices of Dr. Helfand upon

petitioner were stigmatized by the Trial Court as such mental coercion and the confession made to the doctor was characterized by the Trial Court for this reason as "worthless as evidence of guilt". The jury were so instructed.

Moreover, the mental coercion became the touchstone whereby all subsequent confessions were tested and judged by the jury. Their finding that the subsequent confessions were nevertheless voluntary is, therefore, a determination, not of physical fact, but of mental state of mind on the part of petitioner when he subsequently confessed.

Petitioner now asks this Court to find as a matter of law contrary to what the jury found as a matter of fact,—and that, be it noted, not in the realm of obvious and demonstrable physical fact but in the debatable field of mental attitude. In effect, petitioner asks this Court to become judge and jury and *psychiatric expert* all in one.

This Court has never heretofore assumed such multiple roll and we are confident that nothing in its constitutional duty compels, or even permits, it so to act.

It is, therefore, respectfully prayed that the petition for a re-hearing should be in all respects denied.

William I. Siegel

Sworn to before me this
2nd day of April, 1953.

David Diamond
Notary Public
March 30, 1954